Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

No. 80-37

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

ROY JOHN LESTER,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOR THE FOURTH APPELLATE DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

GEORGE DEUKMEJIAN,
Attorney General
ROBERT H. PHILIBOSIAN,
Chief Assistant Attorney
General--Criminal Division
DANIEL J. KREMER,
Assistant Attorney General
RICHARD D. GARSKE,
Deputy Attorney General
JAY M. BLOOM,
Deputy Attorney General

110 West A Street, Suite 700
San Diego, California 92101
Telephone: (714) 237-7750

Attorneys for Respondent

QUESTIONS PRESENTED

1. WHETHER THERE WAS A DETENTION BY A FLORIDA LAW ENFORCEMENT OFFICER AND, IF THERE WAS A DETENTION, WHETHER THE DETENTION HAD ANY AFFECT ON THE DECISION OF CALIFORNIA LAW ENFORCEMENT TO USE A DOG TO AID IN A FURTHER INVESTIGATION.

2. WHETHER USE OF A DOG TO AID IN DETECTING NARCOTICS VIOLATED PETITIONER'S FOURTH AMENDMENT RIGHTS.

TOPICAL INDEX

	Pages
OPINION BELOW	1 - 2
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2 - 3
STATEMENT OF FACTS	3 - 11
A. Search Warrant	3 - 6
B. Preliminary Examination and Motion to Suppress Hearing	6 - 11
ARGUMENT	11 - 30
I THE SEARCH OF PETITIONER'S SUITCASE PURSUANT TO THE SEARCH WARRANT WAS WHOLLY INDEPENDENT OF ANY CONDUCT WHICH MAY HAVE OCCURRED IN FLORIDA	11 - 21
II FEDERAL LAW HAS CONSISTENTLY HELD USE OF DOGS FOR DETECTING NARCOTICS AT THE AIRPORT DOES NOT DEPRIVE AN INDIVIDUAL OF ANY FOURTH AMENDMENT RIGHTS	21 - 30
CONCLUSION	31
APPENDIX	

TABLE OF AUTHORITIES

	Pages
CASES	
People v. Eastmon (1976) 61 Cal.App.3d 646	16
People v. Evans (1977) 65 Cal.App.3d 924	26
People v. Furman (1973) 30 Cal.App.3d 454	26
People v. Gale (1973) 9 Cal.3d 788	13
People v. Michael (1955) 45 Cal.2d 751	21
People v. Williams (1975) 51 Cal.App.3d 346	26
United States v. Bronstein (2d Cir. 1975) 521 F.2d 459	22,28
United States v. Chadwick (1977) 433 U.S. 1	28
United States v. Crews (March 25, 1980) ___ U.S. ___ [63 L.Ed.2d 537]	19
United States v. Fulero (D.C.Cir. 1974) 498 F.2d 748	21,28
United States v. Mendenhall (May 17, 1980) ___ U.S. ___ [64 L.Ed.2d 497]	19

TABLE OF AUTHORITIES
(Continued)

	Pages
CASES	
United States v. Painter (W.D.Mo. 1979) 480 F.Supp. 282	29
United States v. Solis (9th Cir. 1976) 536 F.2d 880	23,28,29
United States v. Venema (10th Cir. 1977) 563 F.2d 1003	23,28
Wong Sun v. United States (1963) 371 U.S. 471	19

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OPINION BELOW

The California Court of Appeal, Fourth Appellate District, Division One, received petitioner's direct appeal from a judgment of conviction. In a published opinion, the court found no merit to petitioner's contentions and affirmed the

judgment. The opinion appears at 101 Cal.App.3d 613 (1980).

JURISDICTION

This Court has jurisdiction to consider this case pursuant to 28 U.S.C. 1257, subdivision 3.

STATUTES INVOLVED

The applicable statutes involved are set forth in Appendix A.

STATEMENT OF THE CASE

An information charged petitioner with transportation of marijuana (Health & Saf. Code, § 11360) in count I and possession of marijuana for sale (Health & Saf. Code, § 11359) as to count II. (CT 1.)

Petitioner's motions to suppress evidence and to dismiss the information (Pen. Code, §§ 995, 1538.5) were heard and denied and he entered a guilty plea as to count II. (CT 70-82.)

He was granted probation on the condition he serve 120 days in the county jail. Service of the jail sentence was stayed pending an appeal. (CT 72-74.)

In a published opinion issued on January 30, 1980, in People v. Lester (1980) 101 Cal.App.3d 613 (4 Crim. 11239), the Court of Appeal, Fourth Appellate District, Division One, affirmed the conviction. (Petitioner's Appen. A.)

The California Supreme Court denied a hearing in the matter on April 10, 1980. (Petitioner's Appen. A.)

STATEMENT OF FACTS

A. Search Warrant

A telephonic search warrant was issued by Judge Henderson at 10:08 p.m. on May 19, 1978, based upon the affidavit of Officer Al Alexander of the Narcotics Task Force. The warrant authorized the search

of a suitcase for controlled substances. After he was sworn, Officer Alexander stated the following:

Officer Alexander had a telephone conversation with Deputy Burke of the Broward County Sheriff's Department in Fort Lauderdale, Florida that afternoon. Deputy Burke's attention had been drawn to petitioner in the Fort Lauderdale airport because petitioner and his associate were paying cash for a one-way ticket to San Diego, and they appeared very nervous when contacted by Burke. Petitioner said he had been in Florida for two days. Burke said he was conducting a narcotics investigation and requested permission to look through petitioner's luggage which was denied.

Officer Alexander then contacted the United States Customs dog handler and a dog, Duster, was sent to the airport. Duster had had extensive training and

experience. After the luggage Deputy Burke had described to Officer Alexander as belonging to petitioner had been off-loaded at the San Diego International Airport, Officer Alexander removed it from the baggage belt, placed it among numerous other bags, and when the dog passed it, he responded to the bag which indicated to the handler there was a narcotic inside. The procedure was repeated. The baggage was then returned to the belt and came out into the area where the passengers pick up their baggage. Petitioner claimed the bag and, as he began to walk away, he was stopped by the Narcotics Task Force. Petitioner became extremely nervous and urinated in his pants. Officer Alexander informed petitioner he was obtaining a search warrant. At the time the search

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warrant was obtained, petitioner was at the airport with his baggage. (CT 34-44.)[1/]

B. Preliminary Examination and Motion to Suppress Hearing

On May 19, 1978, at about 4:30 p.m., Officer Alexander received a telephone call from Officer Gann of the Houston Police Department who gave Alexander the telephone number of a Detective Burke of the Fort Lauderdale, Florida, airport detail narcotics division. (PT 45.) Gann told Alexander only that he had been contacted by Burke, that Burke said a Mr. Lester was flying to San Diego via Houston, and the Houston police did not intend to investigate the matter. (PT 69-71.)

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1. CT refers to the clerk's transcript. It was stipulated at the motion to suppress hearing the transcript of the preliminary hearing would be admitted into evidence. (RT 2.) For purposes of this response, PT designates the reporter's transcript of the preliminary examination. RT refers to the reporter's transcript of the 1538.5 hearing.

Alexander called Burke and Burke related certain observations. He saw two men at the National Airlines counter at the Fort Lauderdale airport. One, Lester, was extremely tall, had a full beard, wore casual clothes, described as a dark blue sweater jacket, a white shirt, blue pants, and blue-striped white tennis shoes. He carried a shoulder bag, and checked in a large suitcase, which Burke described as a large brown Tourister suitcase, with a tag bearing the name C. Kosh and it was damaged. Burke also saw Lester pay cash for his ticket. Burke noticed both men were frequently looking around in all directions, unlike other passengers. When Burke contacted the men, they appeared to be very nervous. (PT 46-49, 53, 78-79.)

Burke further related he stopped the two men, obtained their identifications and questioned them about their destination.

Burke told them he was narcotics officer conducting an investigation. Lester asked him if he was looking for cocaine. Burke searched Lester's shoulder bag because he was about to enter a secure boarding area. Burke asked Lester for permission to search the suitcase, but Lester refused. (PT 46-47, 74, 85, 90.)

Burke watched Lester board the plane for San Diego and gave Alexander the flight number and scheduled arrival time in San Diego which was 8:25 p.m. (PT 49.) Alexander went to the San Diego airport and contacted a National Airlines representative, Mr. Moore, at the ticket counter. Moore advised him the flight would be late and, as far as he knew, no one had left that flight in Houston. Alexander told Moore he intended to remove Lester's bag from its course of travel and attempt to obtain

a search warrant for it. Moore shook his head in the affirmative.

Alexander arranged for the assistance of other Narcotics Task Force officers and a dog, which was specifically trained to detect controlled substances.

The flight arrived at about 8:45 p.m. and the baggage was off-loaded about 9:00 or 9:05 p.m. It was brought to a nonpublic baggage area which was shared by all the airlines. The Unified Port District has retained control over that area and has granted narcotics agents permission to enter that area. (PT 14, 49-53; RT 4-6.)

Alexander saw the suitcase in question, removed it from the conveyor belt, and placed it with other luggage in the area. The dog handler, Mr. Demmick, had the dog make two passes at the luggage. Both times the dog indicated a controlled substance was contained in Mr. Lester's suitcase.

Alexander told Agent Perkins about the dog's response to the bag and instructed him to tell the other agents to detain whoever claimed the suitcase in the public area. Alexander then placed the suitcase on the conveyor belt. The entire procedure took between two and four minutes. (PT 53-55; RT 18.)

Agent Cooper saw Lester in the public baggage claim area and recognized him from the description he had been given. Cooper saw Lester pick up the suspect suitcase. Cooper identified himself to Lester and asked him if he would mind accompanying Cooper to the Harbor Police Office. Lester agreed. He appeared very nervous and urinated in his trousers. Cooper took the bag from him and they went to the office. (PT 55, 106-108, 121, 124.)

In the office, Alexander told Lester he was being detained and asked for

consent to search the suitcase which Lester refused. The search warrant was then obtained, and a search resulted in the discovery of about ten pounds of hashish. (PT 57-63, 101-102.)

ARGUMENT

I

THE SEARCH OF PETITIONER'S SUITCASE PURSUANT TO THE SEARCH WARRANT WAS WHOLLY INDEPENDENT OF ANY CONDUCT WHICH MAY HAVE OCCURRED IN FLORIDA

Petitioner first contends the hashish found in his suitcase pursuant to the search warrant should have been suppressed because he was unlawfully detained in Florida, and the search and seizure in San Diego was a direct result of that illegality. The magistrate at the preliminary examination found no detention occurred in Florida. (PT 27; see also PT 190-191, 202.) The court at the motion

to suppress found no unlawful detention, and, even if there were one, ". . . it really had nothing to do with the action of the San Diego officers." (RT 31.) A review of the record indicates any possible detention in Florida did not affect the actions of the San Diego officers.

Officer Alexander stated in his affidavit in support of a search warrant and testified at the preliminary examination that Deputy Burke's attention was drawn to petitioner at the Fort Lauderdale airport because of his attire, his act of looking around in all directions frequently unlike other passengers, and his payment for the ticket in cash.[2/] To Officer Alexander, a trained narcotics officer, this information

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2. Also, of course, in plain sight was petitioner's physical appearance, and his shoulder bag and suitcase. Petitioner's name, flight and destination were readily available from the ticket clerk.

could have been unusual and therefore significant. (PT 47, 69-70; CT 37; see People v. Gale (1973) 9 Cal.3d 788, 795-796 ("'[e]xperienced police officers naturally develop an ability to perceive the unusual and suspicious which is of enormous value in the difficult tasks of protecting the security and safety of law-abiding citizens. . . .'").)

Apparently, this was unusual to Deputy Burke because he decided to act upon his perceptions. For whatever reasons, he chose to directly contact petitioner. His suspicions were, however, not satisfied by the contact. Since petitioner was about to leave Fort Lauderdale and Deputy Burke had no other information to use to detain petitioner against his will, he had two choices -- he could have forgotten about the matter or he could forward his suspicions ahead to appellant's destination.

He properly chose the latter course, and, of course, his suspicions proved well founded.

Officer Alexander, upon receiving the information from Deputy Durke, also chose to act. He obtained the services of Duster. Duster detected the presence of a controlled substance, and, based upon Duster's reaction, a search warrant was obtained. It is therefore apparent no tangible evidence or information obtained after the contact between petitioner and Burke was used to establish probable cause for the search warrant. Thus, the only "fruit" from Burke's actions petitioner can point to was the "impetus" it gave to Alexander's actions in San Diego. Petitioner can only claim the catalyst for Alexander's actions was the information obtained by Burke's unlawful instrusion. (AOB 18-19.)

As we have shown, however, Deputy Burke's suspicions were aroused before he contacted petitioner, and those suspicions caused him to contact petitioner. When he was unable to satisfy his suspicions directly from petitioner, he had every right to continue his investigation in another manner. For example, Burke could have obtained petitioner's name from the airline agent and then run a records check, he could have asked other officers if they were familiar with petitioner, or he could have commenced a surveillace on petitioner. Based upon the results of these actions, further investigation may or may not have been tried. Probably because time did not permit, Burke instead forwarded his information to San Diego officers to do with as they wished. Thus, the impetus for the investigation occurred before Burke contacted petitioner, nothing was obtained from the

contact which was in any way used to support the later search, and the search warrant is fully supportable solely by information obtained after, and independent from, Deputy Burke's actions.

The effect of petitioner's argument is once an illegality occurs, the suspect is foreover insulated from further investigation. Such is not the law. The appropriate test is set forth in People v. Eastmon (1976) 61 Cal.App.3d 646, at page 653:

> "However, the 'but for' test alone is not sufficient to render inadmissible evidence that subsequently is obtained by the police in a legal manner; to render inadmissible evidence which possibly would not have been obtained by the police 'but for' some earlier police impropriety, there must be such a connection between the impropriety and the subsequent transaction so that it can be said, fairly, that the two transactions cannot be treated separately. In short, evidence is not rendered inadmissible against a defendant merely because there is a relationship

> between the evidence and some prior illegal police activity, if, for example, the evidence was obtained by the police as the result of an independent intervening act voluntarily committed by the defendant by means which are distinguishable from the initial illegality. (Citation.) As the court explained in Restani v. Superior Court (1970) 13 Cal.App.3d 189, 198: 'Under the Wong Sun test . . . evidence . . . is not excluded merely because it would not have been obtained but for the illegal police activity if the connection between such evidence and the illegal activity has become attenuated so as to dissipate the taint. [Citations.] Accordingly, if the prosecution can establish that the primary illegality was not a sine qua non or indispensable cause of the discovery of the physical evidence, but, that at worst it merely contributed to such discovery, the exclusionary rule does not apply. [Citations.]'"

Hence, the trial court's conclusion the actions of Deputy Bruke were independent from those of the San Diego officers is

a reasonable one and supported by substantial evidence.

Moreover, the trial court's conclusion the actions of Deputy Burke were independent from those of San Diego officers was reasonable in light of the fact the Florida contact was not the direct cause for the use of the dog in San Diego. Rather, the dog was used in San Diego because of the independent judgmental decision of the Florida officer to contact Houston police, the decision of Houston Police to contact San Diego officials, the call from San Diego officials to the Florida police, and, finally, the decision of the San Diego officials to use the dog. In light of all the independent intervening judgments made in this case before the dog was used, it cannot be said use of the dog in San Diego was affected by the Florida contact. Rather, the chain from the

Florida contact to the decision to use the dog in San Diego was so interrupted by independent judgments that the San Diego conduct could not be the fruit of any conduct by Florida officials. (Wong Sun v. United States (1963) 371 U.S. 471; United States v. Crews (March 25, 1980) ___ U.S. ___ [63 L.Ed.2d 537, 545].)

Furthermore, in light of the recent decision of this Court in United States v. Mendenhall (May 27, 1980) ___ U.S. ___ [64 L.Ed.2d 497], it is questionable if there even was a detention in this case in the Florida airport. In Mendenhall this Court noted every contact between the police and citizens is not necessarily a detention or arrest. Instead, there may be situations where the police merely interview or contact individuals. Under such circumstances there is no seizure within the meaning of the Fourth Amendment. Accordingly, this Court

observed a person is only seized within the meaning of the Fourth Amendment when, by means of physical force or a show of authority, his freedom is restrained.

In the instant case the record shows petitioner was not seized in any manner in Florida. He was merely contacted and casually questioned by the police officer and one bag was searched for airport security purposes. When a further search was refused by petitioner, he was not restrained in any way. Rather, the officer acceded to his wishes and did not conduct the search. Thereafter, petitioner was allowed to leave and board the airplane without any restriction.

Under these circumstances petitioner's freedom was not restrained in any way and he was thus not detained. Accordingly, there was no conceivable violation of his Fourth Amendment rights

in Florida. (See too People v. Michael (1955) 45 Cal.2d 751, 754.)

II

FEDERAL LAW HAS CONSISTENTLY HELD USE OF DOGS FOR DETECTING NARCOTICS AT THE AIRPORT DOES NOT DEPRIVE AN INDIVIDUAL OF ANY FOURTH AMENDMENT RIGHTS

Petitioner's other two contentions are that use of dogs to detect narcotics at the airport is a violation of an individual's Fourth Amendment rights and that the federal cases are in hopeless disarray on the issue. Neither contention has any merit and there is thus no basis for granting petitioner's request for review here.

The first case to deal with the issue in the federal courts was United States v. Fulero (D.C.Cir. 1974) 498 F.2d 748. There a dog was used to sniff suitcases at a bus station. The Court of Appeal found use of a dog in such activities did not constitute an intrusion into an individual's right to

privacy. Since use of the dog was not deemed to be an unlawful intrusion, the court found no need to determine whether there was any standard required for permitting dogs to sniff luggage.

The next case discussing the issue was United States v. Bronstein (2d Cir. 1975) 521 F.2d 459. In this case a marijuana sniffing dog was used at an airport and detected marijuana in the defendant's luggage. The Court of Appeal concluded there was no reasonable expectation of privacy as to the outside of luggage at an airport and found use of the dog was not a search within the meaning of the Fourth Amendment.

While the court did note the police had ample cause for the use of the dog, the court did not impose any cause requirement for the use of the dog. Rather, it essentially held the use of the dog was

not an intrusion and, in passing, noted the police had cause for the investigation.

In United States v. Solis (9th Cir. 1976) 536 F.2d 880, the Court of Appeals again upheld the use of a marijuana sniffing dog. The court found use of the dog under the circumstances was not unreasonable and not a prohibited search under the Fourth Amendment. The court concluded use of a dog to aid in detecting the odor of marijuana was not a search and there was no invasion of any right to privacy as the dog was not intruding into any items. Rather, the dog was sniffing an odor emanating from the item into open air space.

Although the court did note there was a founded suspicion for the investigation, the court did not require there be a certain quantum of proof to use a dog.

Similarly, in United States v. Venema (10th Cir. 1977) 563 F.2d 1003, the

Court of Appeals held use of a marijuana sniffing dog to smell the odor of marijuana emanating from a closed item was not a search where the dog had a right to be where he was at.

Consequently, while petitioner has tried to establish that federal cases are in disarray on the subject of the use of dogs for narcotics detention, they have generally upheld use of dogs as an investigation tool on the ground use of the dog does not constitute a Fourth Amendment violation. The basic reasons for this conclusion are that (1) the sniffing of the dog is not a constitutional intrusion into a right of privacy; (2) the dog conducts its activity from a place where it and law enforcement officers have a right to be; (3) there is no right to privacy in an odor which emanates from luggage into the open air space where it can be detected by

the dog; and (4) the investigative process is reasonably circumscribed.

Although these cases have in passing mentioned various levels of information known to the police such as founded suspicion, ample cause, etc.; none of these cases imposed any standard of proof on police as a prerequisite to using dogs. Rather, these statements as to the level of information known to the officers seem designed to indicate the investigation in each case was not an exploratory one, but was a reasonably circumscribed investigation under the facts of that particular case.

Petitioner also points out that California cases dealing with the area are also in conflict with each other. However, the fact California state courts have not agreed exactly how to deal with dog sniffing cases does not present a substantial federal question warranting this Court grant

certiorari in this case. In any event, the three California cases really are consistent to the extent they suggest the investigation should not be exploratory, but geared toward some specific items or items of luggage. (See People v. Furman (1973) 30 Cal.App.3d 454; People v. Williams (1975) 51 Cal.App.3d 346; People v. Evans (1977) 65 Cal.App.3d 924.)

In any event, as there really is no conflict among the federal courts on the issue, there is no need to grant review in this case. Moreover, it should be noted the conduct of the officer and the dog in this case complied with existing federal authority concerning marijuana detecting dogs.

Here the dog was used from a place where the police and the dog had a right to be as Officer Alexander had been given a key to the area where the baggage was and it was an area used by many airlines in San Diego. Furthermore, the airport manager had

consented to Alexander's presence in the area. (RT 3-6; PT 14.) Petitioner also could not have any right to privacy as to an odor emanating from the luggage into the open air space which could be detected by the dog. In addition, the dog did not intrude in any way into the contents inside the luggage to which there might be an expectation of privacy.

The conduct of the officer here was also reasonable. It was based on reliable information for a Florida law enforcement officer, involved use of a previously tested and reliable dog (CT 37-38), and the bag was not unduly delayed or unreasonably manhandled.

As the investigation thus was narrowly circumscribed, occurred from a place where police had a right to be, did not intrude into any privacy interest of petitioner, and did not constitute any physical intrusion into the property of petitioner; use of the dog to sniff petitioner's luggage

was proper. (United States v. Solis, supra, 536 F.2d 880; United States v. Bronstein, supra, 521 F.2d 459; United States v. Fulero, supra, 498 F.2d 748; United States v. Venema, supra, 563 F.2d 1003.)

Nothing in United States v. Chadwick (1977) 433 U.S. 1, compels a contrary conclusion. That case dealt with the warrantless search of the contents of luggage. The instant case involves the examination of an odor emanating outside the piece of luggage and use of information obtained in this examination to eventually obtain a search warrant for the contents of the luggage.

Consequently, the use of the dog in this case to aid in the detection of marijuana was in accord with federal law on the subject and thus did not constitute a violation of petitioner's Fourth Amendment rights.

Petitioner's suggestion some requirement of probable cause should be

imposed on law enforcement before a dog may be used makes no sense. If police had probable cause to search, they could simply get a warrant. Moreover, use of a dog to aid in an investigation is akin to using binoculars or lights to aid in a plain sight search. (See United States v. Solis, supra, 536 F.2d 880.) As courts do not require any probable cause or reasonable cause to use these items, there is no reason to impose such a requirement for police to use a dog to aid in their investigation of items which may be detected through plain smell. This is especially true when, as noted earlier, the dog's use of its own sense of smell does not constitute an instrusion into any matter to which there is an expectation of privacy. (See United States v. Painter (W.D.Mo. 1979) 480 F.Supp. 282.) Rather, the dog is sensing odors which have emanated into open air

space. Furthermore, there is no reason to impose some reasonable or probable cause requirement when the police and the dog, as in plain sight searches, are merely standing in a place where they have a right to be at the time the dog is using its senses.

Rather, the only reasonable requirement is that the use of dogs not be a license for exploratory investigations. Since the cases have already set forth such a limitation, there is no reason to impose any high level of proof to permit an investigation. Thus, petitioner's complaint here is devoid of substance.

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CONCLUSION

For the foregoing reasons respondent requests the petition for writ of certiorari be denied.

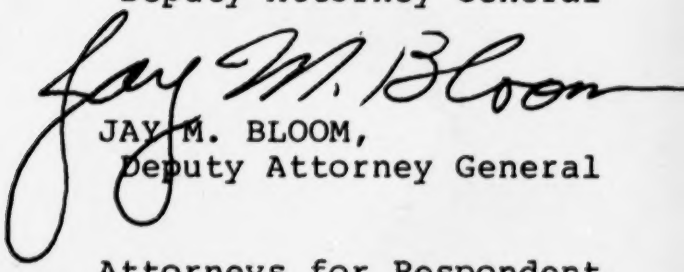
Respectfully submitted,

GEORGE DEUKMEJIAN,
Attorney General

ROBERT H. PHILIBOSIAN,
Chief Assistant Attorney General--Criminal Division

DANIEL J. KREMER,
Assistant Attorney General

RICHARD D. GARSKE,
Deputy Attorney General



JAY M. BLOOM,
Deputy Attorney General

Attorneys for Respondent

APPENDIX A

CALIFORNIA STATUTES

Penal Code Sections

§ 995.

The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

If it be an indictment:

1. Where it is not found, endorsed, and presented as prescribed in this code.

2. That the defendant has been indicted without reasonable or probable cause.

If it be an information:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That the defendant had been committed without reasonable or probable cause.

§ 1538.5.

(a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure . . . .

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 days after notice to the people unless the people are willing to waive a portion of this time. The defendant shall have the right to litigate the validity of a search or seizure de novo on the basis of the evidence presented at

§ 1538.5, subdivision (i), continued a special hearing. After the special hearing is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his motion at the special hearing.

Health and Safety Code Sections

§ 11359.

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

§ 11360.

(a) Except as otherwise provided by this section or as authorized by law, every person who transports, imports into this state, sells, furnishes, administers,

§ 11360, subdivision (a), continued

or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment in the state prison for a period of two, three or four years.

AFFIDAVIT OF SERVICE BY MAIL

ATTORNEY:

George Deukmejian, Attorney General
Jay M. Bloom, Deputy Attorney General
110 West A Street, Ste. 700
San Diego, CA 92101

No. 80-37

ROY JOHN LESTER,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

I, the undersigned, say: I am a citizen of the United States, over 18 years of age, employed in the County of San Diego, in which county the within-mentioned mailing occurred, and not a party to the subject cause; my business address is 110 West A Street, Suite 700, San Diego, California, 92101.

I served the within BRIEF OF RESPONDENT IN OPPOSITION ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE FOURTH APPELLATE DISTRICT: an original and 39 copies on the United States Supreme Court as follows: Michael Rodak, Jr., Clerk, U.S. Supreme Court, Washington, D.C. 20543 of which a true and correct copy of the document filed in the cause is affixed, by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Martin Lee Rakley, Esq. (3 copies)
222 Ash Street
San Diego, CA 92101

Michael J. McCabe, Esq. (3 copies)
108 Ivy Street
San Diego, CA 92101

Robert L. Ford, Clerk
Court of Appeal
Fourth District, Div. One
1350 Front St., Rm. 6010
San Diego, CA 92101

Robert D. Zumwalt, County Clerk
San Diego County
220 W. Broadway
San Diego, CA 92101

Edwin L. Miller, Jr.
San Diego District Attorney
220 W. Broadway, Ste. 700
San Diego, CA 92101

J. L. Kavanagh
Chief Deputy Clerk
California Supreme Court
350 McAllister St., Rm. 4050
San Francisco, CA 94102

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 25th day of September, 1980.

There is a delivery service by United States mail at each place so addressed or regular communication by United States mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, September 25, 1980.

Clifford E. Reed, Jr.

Subscribed and sworn to before me this 25th day of September, 1980

Karen K. Lum

Notary Public in and for said County and State.

KAREN K. LUM
NOTARY PUBLIC — CALIFORNIA
COUNTY OF SAN DIEGO
My Commission expires Feb. 24, 1984